IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3457 OF 2005

The State of Maharashtra ..Applicant
V/s.
Subodh J. Tiwari & anr. ..Respondents

Mr.Y.S.Shinde, APP for the State of Maharashtra

CORAM : J.H.BHATIA, J.

DATE : 20TH APRIL, 2007

P.C.

1. Heard Mr.Y.S.Shinde, the learned APP for the State. None for the respondents. Perused the record and the Judgment of the trial Court.

2. This is an application seeking leave to prefer an appeal against the order of acquittal in respect of the offence under Section 306 r/w.34 of the I.P.C.

3. The prosecution case in brief, is that, the deceased Seema was married to the respondent No.1 Subodh on 26th April, 2001. He and his brother made

certain demands from time to time which were satisfied. On 19th January, 2004, she suffered certain burn injuries at her house and was taken to Surya Hospital, Pune. Information of this incident was given by the respondent No.1 to her parents on 24th January, 2004. On 24th January, 2004 she died because of burn injuries. On 10th February, 2004 her brother lodged the F.I.R., on the basis of which the offence came to be registered under Section 498A & 306 r/w.34 of the I.P.C. After investigation both the accused were put to trial for the said charges. The learned 6th Ad-hoc Assistant Sessions Judge, Pune after hearing the prosecution convicted both the respondents for the offence punishable under Section 498A r/w.34 of the I.P.C. but acquitted both of them for the offence punishable under Section 306 of the I.P.C. The State seeks to prefer an appeal against the acquittal for the offence punishable under Section 306 of the I.P.C.

4. The record reveals that immediately after the incident Seema was taken to the hospital and after initial examination she was admitted in the hospital. The Doctor on duty informed the police that as per the statement of the injured Seema, she had suffered burn injuries because of flame of the gas while she was trying to make a tea for her brother-in-law. After that her statement was recorded by the police inspector in presence of the Medical Officer wherein she repeated the same story. She had also specifically stated that her husband was not present in the house at the time of the incident. Only her sister Geeta deposed that Seema had told her that because of the cruelty meted out to her she had immolated herself after pouring Kerosene. The spot panchanama does not disclose that her clothes were completely burnt. The clothes were not referred to C.A. to establish that there was kerosene on them. Dying Declaration of Seema was not recorded in presence of any Magistrate. Thus, on one hand, there was written

Dying Declaration recorded by the Police Inspector and report sent by the Medical Officer showing that it was accidental fire and on the other hand, there was an oral statement of her sister that the deceased had told her that she had immolated herself. It is material to note that Geeta did not lodge any report nor her brother lodged any report till 10th February, 2004 i.e. for almost 17 days after her death. Taking into consideration these circumstances, 6th Ad-hoc Assistant Sessions Judge found that the prosecution had failed to prove the charge under Section 306 of the I.P.C.

5. In view of the circumstances noted above, I find it difficult to take a different view from the view taken by 6th Ad-hoc Assistant Sessions Judge. I find no substance in the appeal.

6. Leave refused. The application stands rejected.

(**J.H.BHATIA, J.**)